UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.256/Add.1
13 May 1996

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 256th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 May 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Malta (continued)

* The summary record of the closed part of the meeting appears as document CAT/C/SR.256.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-16181 (E)

The public part of the meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Malta (continued) (CAT/C/12/Add.7)

1. At the invitation of the Chairman, Mr. Bartolo, Mr. Quintano and Ms. Aquilina (Malta) took places at the Committee table.

2. Mr. QUINTANO (Malta) said that no legislation had been adopted to ensure direct enforceability of the Convention in Malta. It had been considered preferable to incorporate the crime of torture, as defined in article 1, into existing legislation and to extend the scope of section 5 of the Maltese Criminal Code. Section 139 A of the Criminal Code, which referred to the crime of torture, could not be invoked by an individual but was applied by the Attorney General when he drew up the bill of indictment. Other articles of the Convention that were not purely administrative could be invoked under the Constitution or other statutes, and Maltese case law tended to treat even the slightest infringement as inhuman and degrading treatment.

3. It was inconceivable that a person in danger of being expelled, returned (refoulé) or extradited to a State where there were substantial grounds for believing he might be subjected to torture would not be adequately covered by chapter 219 of the Laws of Malta (the European Convention on Human Rights Incorporation Act of 1987) or the Constitution. The Constitution could be invoked directly before the Civil Court, First Hall, and the Constitutional Court of Malta, even where there was only a likelihood of a breach of human rights.

4. Solitary confinement had not been ordered by the Maltese courts for many years and was virtually a dead letter. Similarly, the Constitution contained numerous references to the death penalty (which had been abolished in 1971) since they had not yet been deleted. Even if solitary confinement were to be ordered, the defence counsel could refer the matter to the Constitutional Court which would certainly overturn the decision.

5. Under sections 31 to 39 of the Prison Regulations of 1981, a prisoner would receive any medical treatment he required in the unlikely event of being placed in cellular confinement, which was, however, regarded as an outdated method of discipline.

6. The members of the Prison Board were appointed annually by the President of Malta. There were no exact rules stipulating how they were to be chosen, but most of them served in a voluntary capacity and were definitely independent. In addition, the Chief Justice, Minister of Justice, all the judges and magistrates and the Attorney General were ex officio members of the Board and could inspect prison conditions whenever they wished.

7. Magistrates and judges were appointed by the executive. Magistrates had to have practised for at least 7 years at the Bar and judges for 12 years. Under new section 101 A of the Constitution, a commission consisting of judges and magistrates and the President of Malta had been established to advise the Government concerning suitable candidates. No special training was given, but

members of the judiciary had acquired considerable practical experience at the Bar. A constitutional amendment requiring a two-thirds majority in parliament would be needed to change the conditions of appointment.

8. With regard to the exceptions to the right to life that were mentioned in the Maltese Constitution, he explained that they had been invoked only once in Malta, when ships allegedly carrying nuclear weapons had put into a Maltese port, but the case had been withdrawn. Section 227 of the Criminal Code on justifiable homicide did not conflict with the relevant constitutional article.

9. In criminal cases, the court would appoint a defence lawyer, if so requested by the accused, without conducting a means test. In civil cases, legal aid was granted to defendants with an annual income of less than 3,000 Maltese lira, or who received the minimum wage.

10. Lastly, in reply to a question asked concerning possible means of redress after expulsion from Malta, he said that a person so expelled could appoint an agent who would file a case under the appropriate articles of the Constitution, chapter 219 of the Laws of Malta and article 14 of the European Convention on Human Rights. In that connection, he clarified the facts of the "Sudanese incident" and assured the Committee that Malta had gone out of its way to help people in distress, although it was not internationally bound to do so.

11. Refugee status in Malta was obtained through the United Nations High Commissioner for Refugees (UNHCR) office in Rome but, in the island itself, there was a very active Migrants' Commission which took cognizance of all applications for refugee status. However, Malta, an extremely densely populated country, simply had no room for more refugees.

12. The office of Ombudsman had been created in 1995. A former civil servant had been chosen by the House of Representatives. His terms of reference included investigation of the behaviour of any government department. Nevertheless, under section 20 of the Ombudsman Act, the Prime Minister could bar the provision of certain items of information, if their disclosure would prejudice the investigation of offences.

13. He said that, as far as he knew, there was no administrative compensation scheme; ex gratia payments were sometimes made. In the event of torture or inhuman or degrading treatment, the victim would have to claim damages through the courts. The Government had had to pay non-material damages for an offence committed by a police officer.

14. Interdiction was defined in section 10 of the Criminal Code and could be general or special. General interdiction disqualified a person who had been sentenced from holding public office, whereas special interdiction prohibited such a person from the exercise of a particular profession or holding certain types of public office or employment.

15. Turning to the question of habeas corpus, he quoted section 137 of the Criminal Code, which had been successfully invoked even in a strange case of contempt of court. Another approach was to rely on article 5 of the European Convention on Human Rights.

16. A question had been asked concerning an arrested person's immediate access to legal counsel. While the political will to move in that direction existed, progress was slow, because more sophisticated investigating methods were needed than those currently at Malta's disposal. Experience showed that a hardened criminal would never answer questions or sign a confession and his Government considered that it was better to capture a criminal than to be over-generous to a suspect. Nevertheless, as paragraph 63 of the report (CAT/C/12/Add.7) stated, section 39, paragraph 10, of the Constitution made it clear that no one had to incriminate himself at any stage of the process from arrest to the end of trial. In Malta, there was no assumption of guilt if the accused remained silent.

17. Replying to a question by Mr. Sørensen about detention in a mental hospital under the Mental Health Act, he stated that the opinions of two doctors were required to certify someone and that the Mental Health Act was also enforced in the prisons. If a plea of insanity was entered in court, it was for the jury to decide whether the person concerned was fit to stand trial and also what that person's state of health had been at the time of the offence, but the judge was responsible for issuing a warrant of detention.

18. There was no centre for the rehabilitation of victims of torture in Malta since there were no torture victims in need of its services. Nevertheless, he would pass on the Committee's suggestion that a centre be established and a contribution made to the United Nations Voluntary Fund for Victims of Torture.

19. Sections 30 to 39 of the Prison Regulations applied to the choice of a doctor by a person in prison. Persons in custody were also entitled to choose their own doctors during investigations.

20. In reply to a question asked about the ratification of treaties, he said that, if a treaty was likely to infringe Malta's sovereignty or have a direct influence on its people or their rights, then parliamentary ratification would definitely be necessary. The usual Maltese practice was not to proceed with ratification unless the legislation which existed was in full conformity with the treaty provisions.

21. He could not recall any instance of a conflict between an international treaty and Maltese law but, if the international law had to be incorporated in domestic legislation and the requisite amendments to existing laws had not been made, the courts would rely on the two principles of lex specialis derogat generalis and lex posterior derogat anterior.

22. As to the question whether a judicial warrant was necessary for an arrest, particularly in cases of in flagrante delicto, he said that a warrant was not needed in Malta except where matters relating to extradition were involved. Under the Criminal Code, the Executive Police had the power to arrest any person who had committed or was suspected of having committed any crime punishable with imprisonment: arrests for less serious crimes could not be made. Superior orders could definitely not be invoked to avoid either criminal or civil liability, even by members of the police when making arrests.

23. However, it was often difficult for the police to be sure that "reasonable" suspicion existed before making an arrest. For instance, in a

recent case involving a separated couple, the father had been arrested for refusing to return the child to its mother, but it had later been ruled that the arrest was wrongful since a father could not be guilty of abducting his own child.

24. On the question asked by Mr. Camara concerning paragraph 46 of the report, he stressed that the criminal law had to be interpreted very narrowly and that no defences other than those listed in the Criminal Code were valid. Thus, it would not be a defence to say that a person had been tortured because a state of war existed.

25. In connection with the case of the ex-Commissioner of Police who had been held in detention for a long period, the question had been asked whether Maltese law contained a provision requiring that justice be done within a reasonable time. Two sections of the Criminal Code contained provisions to that effect, and they were frequently invoked.

26. It had also been asked why, in a case that had been brought in 1980, no sentence had been passed until 1992. The reason was that, until then, the court had not had enough evidence to act. Criminal cases tended to take a long time in Malta, and there were many accused persons awaiting trial, because of the difficulties involved in empanelling a jury and securing the services of defence and prosecution lawyers.

27. As for the question whether the penalty for torture was more serious than that for grievous bodily harm, the answer was in the affirmative: torture carried a minimum sentence of five years' imprisonment. Fortunately, no cases had yet occurred in Malta and he hoped that none would occur in the future.

28. Mr. Dipanda Mouelle had asked why no provision was made under article 139 A for penalizing instigation to commit torture. The question of instigation in general was already provided for under various sections of the Criminal Code, and there had thus been no need to repeat those provisions when introducing the new article 139 A dealing with the crime of torture. Section 422 provided that a person was deemed to be an accomplice to a crime if he ordered another to commit a crime or instigated the perpetration of a crime. The wording was in line with that used in article 1 of the Convention, to which the Government had faithfully adhered, despite strong opposition from some leading criminal lawyers.

29. Mr. ZUPANČIČ asked whether the Maltese Criminal Code provided for justification - for example, self-defence - to exclude the illegality of an act.

30. Mr. QUINTANO (Malta) said that justification was provided for in the Code and was applicable to a number of crimes, notably to voluntary homicide and grievous bodily harm.

31. Mr. ZUPANČIČ asked whether justification also included the concept of the lesser evil. For example, if a member of a terrorist organization known to have planted an explosive device were captured, he wondered whether the police would be justified in torturing him to extract information that would prevent disaster and save lives.

32. Mr. QUINTANO (Malta), said that, in such a case, there could be no justification since the defence referred to was not one contemplated in Maltese law.

33. Mrs. ILIOPOULOS-STRANGAS said that she did not understand why paragraph 51 of the report stated that the protection of the European Convention on Human Rights or of the Constitution could be invoked but not that of article 3 of the Convention. She wondered whether the legal status of the Convention in Malta was inferior to that of the European Convention on Human Rights.

34. Mr. QUINTANO (Malta) said that the text of article 3 of the Convention had not been incorporated into Maltese domestic law because the European Convention on Human Rights, which covered the same issue, had been so incorporated in 1987. The establishment of three sets of provisions covering roughly the same area would have confused the judges applying the law. Indeed, the fact that two separate instruments - the European Convention and the Constitution - could be invoked was already a potential source of difficulty. That did not mean that the status of the Convention was in any way inferior to that of any other convention to which Malta was a party.

35. Mrs. ILIOPOULOS-STRANGAS pointed out that, with regard to expulsion, return (refoulement) or extradition, the provisions of article 3 of the European Convention differed markedly from the provisions of article 3 of the Convention against torture.

36. Mr. QUINTANO (Malta) said that article 36 of the Constitution offered sufficient protection in practice. He cited a recent case in which a Jordanian who had been granted refugee status had been arrested for possessing a forged passport, for which the penalty was deportation. The defence counsel had argued that deportation would have meant death and there had been every indication that the case would go in the refugee's favour, when he had absconded from the island. In practice, there was clearly no need to invoke article 3 of the Convention in such cases.

The public part of the meeting was suspended at 5 p.m. and resumed at 5.25 p.m.

37. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) read out the conclusions and recommendations of the Committee on the initial report of Malta.

"Conclusions and recommendations of the Committee against Torture

MALTA

The Committee against Torture considered the initial report of Malta (CAT/C/12/Add.7) at its 255th and 256th meetings, on 7 May 1996 (see CAT/C/SR.255 and 256), and adopted the following conclusions and recommendations:

A. Introduction

The Committee welcomes the submission of the initial report and core document of Malta and thanks the Maltese delegation for its oral introduction, which gave rise to a frank and constructive dialogue.

B. Positive aspects

The Committee notes with satisfaction Malta's commitment to the protection and promotion of human rights, as attested by its ratification of a number of relevant international treaties and by its recognition of the competence of the Committee against Torture to consider communications from States and individuals in conformity with the terms of articles 21 and 22 of the Convention.

The Committee expresses its satisfaction that the crime of torture has been incorporated in national legislation, in conformity with article 1 of the Convention.

The Committee regards as a positive aspect the adoption by Malta of a new interrogation code which contains provisions to ensure the prevention of torture.

The Committee regards the abolition of the death penalty as a very positive development.

C. Factors and difficulties impeding the application of the provisions of the Convention

The Committee understands that Malta's unusual geographic and demographic situation poses certain obstacles to the full application of article 3 of the Convention.

D. Subjects of concern

The Committee is concerned that the available judicial remedies in the matter of return (refoulement) and expulsion are less than satisfactory.

The Committee is concerned at the absence in national legislation of the right of persons deprived of their liberty to immediate access to a lawyer.

E. Recommendations

The Committee recommends that the State party introduce into its national legislation provisions permitting the full application of article 3 of the Convention.

The Committee would welcome a contribution by Malta, however symbolic, to the United Nations Voluntary Fund for Victims of Torture."

38. Mr. QUINTANO (Malta) said that his Government had endeavoured to comply with all the articles of the Convention, including article 3. He had perhaps failed to make it clear that the Maltese Extradition Act established that any person extradited could immediately claim that his human rights had been violated and that all human rights applied even in cases where no criminal charge was lodged.

39. The CHAIRMAN thanked the members of the delegation of Malta for their spirit of openness and frank collaboration, as well as for their comprehensive replies to the Committee's questions.

The public part of the meeting rose at 5.45 p.m.